

Letter of Findings Number: 01-20140466
Income Tax
For Tax Year 2010

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUES

I. Income Tax–Deduction Calculation.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-14.5; IC § 6-8.1-5-1; [45 IAC 3.1-1-1](#).

Taxpayer protests the Department's recalculation of a claimed deduction.

II. Tax Administration–Interest and Negligence Penalty.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1.

Taxpayer protests the imposition of interest and a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who had income via the Indiana lottery. Taxpayer deducted a portion of these winnings in her 2010 Indiana income tax return. The Indiana Department of Revenue ("Department") conducted an audit and determined that Taxpayer's deductions for lottery winnings exceeded the statutory limit. This resulted in an increase in Taxpayer's adjusted gross income tax liability for 2010. Taxpayer protested the imposition of this increased tax liability as well as accrued interest and an imposed negligence penalty. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required

I. Income Tax–Deduction Calculation.

DISCUSSION

Taxpayer protests the increase of its adjusted gross income tax for 2010. Taxpayer argues that it should be allowed to keep its claimed lottery winnings deduction because the 2010 tax return instructions did not stipulate a maximum deduction for lottery winnings. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

IC § 6-3-2-1(a) states:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

IC § 6-3-1-3.5 defines adjusted gross income as:

When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

. . . .

(Emphasis added).

[45 IAC 3.1-1-1](#) further describes adjusted gross income:

Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross

Income" as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

IC § 6-3-2-14.5 states:

The first one thousand two hundred dollars (\$1,200) of prize money received from a winning lottery ticket purchased under [IC 4-30](#) is exempt from the adjusted gross income tax imposed by this article. If the amount of prize money received from a winning lottery ticket exceeds one thousand two hundred dollars (\$1,200), the amount of the excess is subject to the adjusted gross income tax imposed by this article.

All gross income will be subject to the state's adjusted gross income tax unless it can be deducted or modified according to the Internal Revenue Code or Indiana Code. Although Taxpayer is correct that the 2010 tax return instructions did not stipulate a limit for the deduction of lottery winnings, the statutory code explicitly states that only the first \$1,200 of lottery winnings may be deducted as provided by IC § 6-3-2-14.5. Any amount received, attributable to lottery winnings, in excess of \$1,200 is included in gross income and subject to the adjusted gross income tax. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied regarding the imposition of additional income tax.

II. Tax Administration—Interest and Negligence Penalty.

DISCUSSION

Taxpayer also protests the assessment of the interest and the negligence penalty. Taxpayer claims its deduction exceeded statutory limitations because the 2010 state tax return instructions did not stipulate a limit for the deduction of lottery winnings. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

IC § 6-8.1-10-2.1 addresses negligence penalties:

(a) If a person:

- ...
- (3) incurs, upon examination by the department, a deficiency that is due to negligence

...

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent of:

- ...
- (4) the amount of deficiency as finally determined by the department
- ...
- by the due date.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
(Emphasis added).

IC § 6-8.1-10-1 states in part(s):

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) Except as provided by [IC 6-8.1-3-17\(c\)](#) and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section.
(Emphasis added).

A negligence penalty may be waived when reasonable care is shown. However, the Department is prohibited from waiving interest as provided in IC § 6-8.1-10-1. Taxpayer's reliance on the 2010 state income tax return instructions is reasonable in light of the circumstances. Therefore, the negligence penalty is waived.

FINDING

Taxpayer's protest is denied regarding interest and sustained regarding the negligence penalty.

SUMMARY

Taxpayer's Issue I protest regarding the imposition of state income tax is denied. Taxpayer's Issue II protest regarding the imposition of interest and negligence penalty is sustained in part and denied in part.

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